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Further, the Examiner has indicated that claim 49 includes allowable subject matter but is objected to as being dependent upon a rejected base claim. This determination is also gratefully acknowledged.

Claims 46-48 and 50 are rejected under 35 U.S.C. §112 first paragraph. The Examiner contends that the claims include subject matter which is not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. Further, claims 46-48 and 50 are rejected under 35 U.S.C. §251 as being improperly broad in a reissue application. Each of these determinations are respectfully traversed. With respect to independent claim 46, undersigned counsel respectfully requests the Examiner to reconsider her position with respect to the rejections under 35 U.S.C. §112 and 35 U.S.C. §251.

Claim 15 of the original patent, which has again been considered allowable by the Examiner, recites as follows:

A chemotaxis assay procedure comprising measuring the migration of cells across a radiation opaque membrane, wherein said procedure is non-destructive of said cells.

Reissue claim 46 of the present application recites as follows:

A cell migration assay procedure comprising measuring the migration of cells across a radiation opaque membrane wherein said procedure is non-destructive of said cells.

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Claim 46 differs from allowable claim 15 only in that the preamble of claim 15 recites a chemotaxis assay procedure while the preamble of claim 46 recites a cell migration assay procedure. As the Examiner is well aware, chemotaxis is merely one technique to effect cell migration. While the specification of the present application specifically refers to the use of chemotaxis to effect cell migration, the concept which is required to practice the present invention is to effectively induce cell migration across a membrane. One common technique for inducing cell migration is to use a chemo-attractant.

The specification of the present application clearly describes the use of a chemo-attractant to effect such cell migration. However, reading the specification as a whole, it is clear that use of a chemo-attractant is merely the preferred method of causing cell migration. It is cell migration itself, not the manner in which the cells are induced to migrate, which forms a significant part of the broad concept of the present invention.

There are several specific recitations in the specification of the present invention which indicate that cell migration, in a general sense, is more significant than the specific method of attracting the cells across the membrane. Column 4, lines 50-54, recites as follows:

Accordingly, the radiation measured will provide a direct quantitative measure of the number of cells that have migrated across the radiation opaque membrane 10 from chamber 24 to chamber 22.

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Clearly, the operative measurement is cell migration rather than the particular attractant used to effect cell migration. Further, at column 6, lines 27-32 it is clearly noted that the inventive radiopaque membrane of the present invention permits the migration of cells across the membrane. Use of the radiopaque membrane is independent of the particular attractant which causes the cells to migrate therethrough.

Finally, the Examiner's attention is again called to the specification of the present application at columns 5, lines 30-46. As stated therein, a particularly novel aspect of the present invention is described. The Examiner will note that this portion of the specification describes the radiation opaque membrane which allows cells to migrate therethrough. This portion of the specification describes in detail, the ability to have labeled cells migrate across the membrane and be measured by electromagnetic radiation which has been used to stimulate the labeled cells. A significant advantage of the assay procedure of the present invention is that it is non-destructive of the cell sample and thus, permits repeated measurements of the same test sample at different time intervals. Nowhere throughout this description of the salient features of the invention, is there any reference to chemotaxis or to a chemo-attractant. Clearly, at the point where the inventor considered his invention novel, the inventor found no need to describe the particular attractant used to effect migration of the cells.

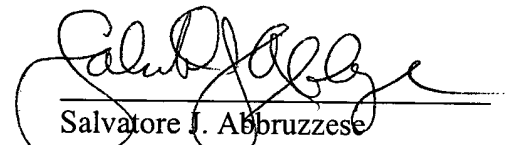
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Taking this into consideration, it is believed that the Examiner should come to the conclusion that the specification of the present application clearly supports the broad concept of a cell migration assay as recited in claim 46. Reconsideration of the Examiner's position is respectfully requested.

Should the Examiner have any questions or comments regarding this submission, the Examiner is invited to contact the undersigned attorney at the telephone number given below.

Respectfully submitted,


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